

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Defendant Bushrod Boone ("Boone") seeks to suppress the evidence obtained by local law enforcement officers in a warrantless search of a San Francisco apartment. Doc #21 (Mot Supp). Boone claims that the search violated the Fourth Amendment to the United States Constitution. Mot Supp at 1. The government opposes. Doc #24 (Opp Supp). The court heard oral argument on these motions on July 12, 2005. Based on the parties' arguments and the applicable federal law, the court GRANTS Boone's motion to suppress.

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I

On May 18, 2004, at approximately 11:14am, San Francisco Police Officer Darren Nocetti received a telephone call from a Confidential Reliable Informant ("CRI"). Opp Supp, Ex A (Nocetti Decl) at ¶ 3. Nocetti, a fourteen-year veteran assigned to the San Francisco Police Department Narcotics unit, was out of state at the time participating in a separate investigation. Nocetti Decl at ¶ 1-3. Nocetti testified that the CRI informed him that "a black male wearing a grey jacket had just brandished a Tec 9 Assault weapon at an unidentified victim." Id at ¶ 4. "Apparently, this was done in an effort to rob the unidentified victim." Id. The CRI explained that "he/she did not personally observe the individual brandish the Assault weapon * * *." Id at ¶ 5. Rather, "people told" the CRI that this individual, referred to as "Bushy-mo," "pulled a gun." Id. The CRI stated that he/she had been familiar with "Bushy-mo" for several years and observed "Bushy-mo" "with firearms on prior occasions." Id at ¶ 6-7. "Bushy-mo" would be identified after his arrest as Boone. Id at ¶ 7.

"Shortly after" the CRI was told that Boone had brandished an assault weapon, the CRI saw Boone and observed that he was wearing a grey jacket. Id at ¶ 8-9. Nocetti testified that the CRI "followed [Boone] into the apartment complex located at 565 Ellis Street." Id at ¶ 8 (emphasis added). In apparent contradiction, Nocetti also testified that the CRI "did not follow [Boone] inside the complex but kn[ew] that Boone visit[ed] Apartment #3 inside the units located 565 Ellis Street." Id at ¶ 10 (emphasis added).

Nocetti worked for at least five years with this

1 particular CRI, an eleven-year resident of the Tenderloin area of
2 the City and County of San Francisco ("Tenderloin"). Id at ¶ 11,
3 15. Nocetti testified that "this CRI ha[d] suffered felony
4 convictions for possession of narcotics" and "was compensated
5 financially for the information he/she provided regarding Boone's
6 possession of the Assault weapon." Id at ¶ 12, 16. "However, this
7 CRI has consistently provided reliable, trustworthy and accurate
8 information on a number of occasions." Id at ¶ 12. Specifically,
9 Nocetti stated that the information previously provided to him by
10 this CRI "had resulted in at least five arrests," "was related to
11 narcotics offenses" and "ha[d] always been accurate." Id at ¶ 13.
12 Furthermore, "this CRI ha[d] worked with other San Francisco police
13 officers providing them with credible information which has also
14 led to numerous arrests." Id at ¶ 14.

15 After speaking with the CRI at approximately 11:14am,
16 Nocetti immediately contacted San Francisco Police Officer Richard
17 O'Reilly, a ten-year veteran of the Tenderloin Task Force, who was
18 working uniform patrol at the time. Id at ¶ 17; Opp Supp, Ex C
19 (O'Reilly Decl) at ¶ 3, 5. Nocetti informed O'Reilly "that a black
20 male, referred to as 'Bushy-mo,' wearing a grey jacket, last known
21 to have entered 565 Ellis Street, unit #3, just brandished a Tec 9
22 Assault weapon at an unidentified victim." Nocetti Decl at ¶ 18.
23 Nocetti further informed O'Reilly "that an individual fitting the
24 same description was seen a week earlier brandishing a Tec 9
25 Assault weapon[;] [a]t that time, however, the individual's
26 whereabouts were unknown." Id at ¶ 19.

27 O'Reilly testified that "Officer Nocetti said that Boone
28 had just entered the apartment building at 565 Ellis Street and

1 entered room #3," Doc #23, Ex A (SFPD Incid Rep) at 6 (emphasis
2 added). In apparent contradiction, O'Reilly testified later that
3 Nocetti told him that "[Boone] was believed to be located at 565
4 Ellis Street, apartment unit #3." O'Reilly Decl at ¶ 6 (emphasis
5 added).

6 O'Reilly immediately communicated this information to
7 other officers in the area to assemble a response team. O'Reilly
8 Decl at ¶ 8. It took O'Reilly approximately two minutes to arrive
9 at 565 Ellis Street, where he met additional uniformed San
10 Francisco Police Officers Jackson, Shin, Montero, Cesari, Recinos
11 and Juarez. Id at ¶ 9-10. Able to gain access to 565 Ellis Street
12 through the front door, these police officers ("the officers")
13 proceeded to unit #3 ("the apartment").

14 The first officer to reach the apartment, O'Reilly
15 "noticed that the door to the unit was slightly ajar and I could
16 hear male and female voices coming from inside the unit." Id at ¶
17 11-12. O'Reilly also noticed that the apartment hallway was
18 "extremely narrow." Id at ¶ 13. O'Reilly was concerned that this
19 placed the officers at a "tactical disadvantage"; "in the event
20 that shots were fired, there would have been no means for us to
21 escape or protect ourselves." Id. Furthermore, the officers did
22 not know who legally resided in the apartment or where the
23 individual they sought was located inside the apartment. Id ¶ 14.
24 Considering the number of residents in the apartment building and
25 the children's playground across the street, O'Reilly "regarded the
26 individual who had brandished the Tec 9 Assault weapon as both a
27 threat to the safety of the community as well as the officers." Id
28 at ¶ 15.

1 Because O'Reilly did not have a clear view of the
2 interior of apartment, he "pushed the door open so that [he] could
3 see inside the unit." Id at ¶ 16. With his weapon drawn, O'Reilly
4 saw Christopher Easterling, whom he recognized from prior contacts
5 he had with Easterling. Id at ¶ 16-17. O'Reilly testified that
6 "Easterling saw me standing on the other side of the threshold to
7 unit #3. I was in uniform and it was clear to me that Easterling
8 knew who I was." Id at ¶ 21. O'Reilly did not know whether
9 Easterling lawfully resided in the apartment or if Easterling was
10 the individual who brandished the Tec 9 Assault weapon. Id at ¶
11 20. O'Reilly knew, however, that Easterling had been convicted of
12 numerous felony offenses and was affiliated with criminal street
13 gangs. Id at ¶ 18. O'Reilly also knew that at the time Easterling
14 was on probation with a warrantless search condition. Id at ¶ 19.
15 Perceiving Easterling as a "danger especially if he were armed with
16 an Assault weapon," O'Reilly ordered Easterling out of the
17 apartment unit. Id at ¶ 22.

18 Within one minute, O'Reilly and his fellow officers
19 detained Easterling and four additional subjects who had been in
20 the apartment. Id at ¶ 23-24. While performing a protective sweep
21 of the room for officer safety purposes, the officers found Boone
22 hiding between a cupboard and the stove in the kitchen area and
23 found another individual sleeping in the closet. Id at ¶ 25.
24 Clearing Boone and this other individual from the room took an
25 additional minute. Id at ¶ 26. Boone was wearing a grey jacket.
26 Id at ¶ 27.

27 At this point, Officer Juarez, a weapons specialist,
28 discovered the Tec 9 assault weapon. Id at ¶ 28. After scanning

1 the main room of the apartment, Juarez saw "what appeared to be the
2 sling of a rifle" protruding from under a chair. Swanson Decl, Ex
3 B (Incid Rep State). Juarez "immediately recognized the sling as a
4 tactical rifle sling" and, after lifting the chair off the ground,
5 found "what appeared to be an 'Intratec 9'" with a "magazine
6 inserted in the magazine well." Id. Juarez stood watch over the
7 weapon until O'Reilly relieved him. Id. Approximately six minutes
8 elapsed from the time that O'Reilly first spoke to Nocetti to the
9 time the apartment was secured. O'Reilly Decl at ¶ 30.

10 Following his arrest, Boone testified that until the time
11 of his arrest, he had been a "frequent houseguest" at the
12 apartment. Doc #22 (Boone Decl) at ¶ 2. From approximately one
13 month prior to his arrest, Boone slept at the apartment as
14 frequently as every other night and no less than twice a week. Id.
15 An occupant of the apartment, Sammil Warren, allowed him to stay
16 there. Id. Even when not in the apartment, Boone left personal
17 items there -- including his radio, shoes and clothes -- with
18 Warren's permission. Id at ¶ 3. When at the apartment alone,
19 Boone had the ability to exclude others from and admit people into
20 the apartment. Id at ¶ 4. Boone visited the apartment every day,
21 ate meals there a few times a week and helped with chores in the
22 apartment. Id at ¶ 5-7.

23 II

24
25 The Fourth Amendment provides that "[t]he right of the
26 people to be secure in their persons, houses, papers, and effects,
27 against unreasonable searches and seizures, shall not be violated,
28 and no Warrants shall issue, but upon probable cause * * *." US

1 Const, Amend IV. Because the Fourth Amendment protects "people,
2 not places," see Katz v United States, 389 US 347, 351 (1967), a
3 person claiming a Fourth Amendment violation must first demonstrate
4 a "legitimate expectation of privacy" in the place searched or the
5 thing seized. Rakas v Illinois, 439 US 128, 143 (1978). "It is a
6 'basic principle of Fourth Amendment law' that searches and
7 seizures inside a home without a warrant are presumptively
8 unreasonable." Payton v New York, 445 US 573, 586 (1980).

9 Accordingly, if claimant establishes a "legitimate
10 expectation of privacy," he must next demonstrate that the alleged
11 violator's conduct constituted a search for Fourth Amendment
12 purposes. "The Fourth Amendment prohibits police officers from
13 making a warrantless entry into a person's home, unless the
14 officers have probable cause and are presented with exigent
15 circumstances." *Id* at 590 (emphasis in original). Thus, if the
16 search was without a warrant, to prove a Fourth Amendment violation
17 claimant must finally demonstrate that the alleged violator lacked
18 either probable cause or exigent circumstances.

19 The court will address each issue in turn.

20
21 A

22 "[C]apacity to claim the protection of the Fourth
23 Amendment depends * * * upon whether the person who claims the
24 protection of the Amendment has a legitimate expectation of privacy
25 in the invaded place." Minnesota v Carter, 525 US 83, 88 (1998)
26 (quoting Rakas, 439 US at 143) (emphasis added). "A subjective
27 expectation of privacy is legitimate if it is one that society is
28 prepared to recognize as reasonable." Minnesota v Olsen, 495 US

1 91, 95-96 (quoting Rakas, 439 US at 143-44).

2 Courts have established that an overnight guest has a
3 legitimate expectation of privacy for Fourth Amendment purposes.
4 "We need go no further than to conclude, as we do, that
5 [defendant's] status as an overnight guest is alone enough to show
6 that he had an expectation of privacy in the home that society is
7 prepared to recognize as reasonable." Olsen, 495 US at 96-97
8 (emphasis added). "[A]n overnight guest in another's home has a
9 reasonable expectation of privacy for purposes of Fourth Amendment
10 standing." United States v Gamez-Orduno, 235 F3d 453, 458 (9th Cir
11 2000).

12 The government concedes that Boone had a "legitimate
13 expectation of privacy" in the apartment: "Pursuant to declaration,
14 Boone has proffered evidence which establishes his reasonable
15 expectation of privacy in 565 Ellis Street, Apartment unit #3."
16 Opp Supp at 4. The government contends, however, that this issue
17 is not dispositive in determining whether Boone has standing to
18 raise a Fourth Amendment claim: "At issue here, however, is not
19 whether Boone had a legitimate expectation of privacy in the
20 contents of the apartment generally, but rather, whether he
21 reasonably believed the seized item -- the assault weapon -- would
22 remain private." *Id.* The government argues that "by placing the
23 firearm in a common room, accessible to several persons in plain
24 view, Boone did not manifest an expectation that the contraband or
25 firearm would remain free from public examination. Accordingly,
26 his motion should fail." *Id.* at 6.

27 The court concludes that the government's argument has no
28 support in law. First, Supreme Court precedent makes clear that an

1 individual's "legitimate expectation of privacy" is "in the home"
2 or "in the invaded place." See Olsen, 495 US at 95-97; Carter, 525
3 US at 88. Accordingly, because Boone has established himself as an
4 overnight guest in the apartment, his privacy is in the apartment,
5 not in the assault weapon.

6 Furthermore, the cases the government cites to support
7 its argument are distinguishable from the present case. In United
8 States v Fay, the Ninth Circuit held that defendant did not have a
9 legitimate expectation of privacy in his bag located in the
10 apartment in which he was staying, where the bag was open and
11 readily accessible to anyone in the apartment. 410 F3d 589, 590
12 (9th Cir 2005). The government fails to recognize a key
13 distinction: the police officers in Fay had obtained consent from
14 the apartment owner to enter her apartment before they seized Fay's
15 bag and firearm. See *id* at 589-90. In the present case, the
16 government concedes that the search of the apartment in which Boone
17 was an overnight guest was without consent. O'Reilly Decl at ¶ 16.
18 Accordingly, the issue of Boone's legitimate expectation of privacy
19 in his firearm is irrelevant in determining standing here.

20 The government similarly misapplies United States v Katz,
21 389 US 347 (1967). Katz held that "what a person knowingly exposes
22 to the public, even in his own home or office, is not a subject of
23 Fourth Amendment protection. But what he seeks to preserve as
24 private, even in an area accessible to the public, may be
25 constitutionally protected." *Id* at 351. The government argues
26 that "by placing the firearm in a common room, accessible to
27 several persons in plain view, Boone did not manifest an
28 expectation that the contraband or firearm would remain free from

1 public examination." Opp Supp at 6.

2 The government's argument fails because it once again
3 ignores a key distinction. In contrast to Katz, where the issue
4 was an individual's expectation of privacy in a public place,
5 Boone's firearm was not "exposed" or "accessible" to the public.
6 Instead, Boone's firearm was only exposed to private individuals in
7 the apartment. See Recznik v City of Lorain, 393 US 166, 168-69
8 (1968) ("[t]he congregation of a large number of persons in a
9 private home does not transform it into a public place open to the
10 police."). Only after police officers had pushed the apartment
11 door open and entered the apartment were they able to view and
12 access Boone's firearm. See O'Reilly Decl at ¶ 16, 28.

13 For the foregoing reasons, the court finds that Boone had
14 a "legitimate expectation of privacy" in the apartment and thus,
15 has standing to raise a Fourth Amendment claim.

16
17 B

18 Having established a "legitimate expectation of privacy,"
19 Boone argues next that the officers (1) conducted a search for
20 Fourth Amendment purposes (2) without a warrant. The government
21 concedes both of these issues. The government stated: "As an
22 initial matter, the United States agrees that pushing open a door
23 in order to view the interior of a residence constitutes a search."
24 Opp Supp at 6. Furthermore, the government conceded that this
25 search was conducted without a search warrant. See *id* at 9. For
26 these reasons, the court turns to the final two issues.

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28 //

C

"The Fourth Amendment prohibits police officers from making a warrantless entry into a person's home, unless the officers have probable cause and are presented with exigent circumstances." LaLonde v County of Riverside, 204 F3d 947, 954 (9th Cir 2000) (emphasis in original). Probable cause is established when there is "a fair probability that * * * evidence of a crime will be found in a particular place." Illinois v Gates, 462 US 213, 238 (1983). "[P]robable cause is a fluid concept -- turning on the assessment of probabilities in particular factual contexts -- not readily, or even usefully, reduced to a neat set of legal rules." *Id* at 232.

In the present case, the government asserts that the information provided by the CRI created probable cause to search the apartment. Opp Supp at 6-7. The Supreme Court has observed that "[i]nformants' tips doubtless come in many shapes and sizes from many different types of persons." Gates, 462 US at 232. In Gates, the Court advocated a totality-of-the-circumstances analysis; these circumstances include the informant's veracity or reliability and his basis of knowledge. *Id*. Under this analysis, "a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id* at 233.

In cases in which the informant is relying on hearsay, "an affidavit relying on hearsay is not to be deemed insufficient on that score, so long as a substantial basis for crediting the hearsay is presented." *Id* at 241-42 (citations and quotations omitted). In the Ninth Circuit, where the basis of the informant's

1 knowledge is hearsay, "the hearsay must carry indicia of
2 reliability both as to the veracity of the original source and the
3 basis of the source's knowledge." United States v Angulo-Lopez,
4 791 F2d 1394, 1397 (9th Cir 1986).

5 The court finds that the officers had probable cause to
6 search the apartment. The CRI's knowledge of the alleged crime was
7 admittedly largely based on hearsay. Nocetti testified that the
8 CRI "did not personally observe the individual brandish the Assault
9 weapon"; rather, unidentified persons allegedly told the CRI that
10 Boone had "pulled a gun." Nocetti Decl at ¶ 5. Moreover, Nocetti
11 testified that the CRI did not have personal knowledge that Boone
12 entered the apartment, because the CRI did not follow Boone into
13 the complex. See id at ¶ 10.

14 Despite these facts, there were sufficient indicia of
15 reliability both as to the veracity of the original source and the
16 basis of the source's knowledge to corroborate the hearsay. The
17 original source told the CRI that "a black male wearing a grey
18 jacket had just brandished a Tec 9 Assault weapon at an
19 unidentified victim." Nocetti Decl at ¶ 4. The original source
20 referred to this individual as "Bushy-mo." Id at ¶ 5. Although
21 the CRI did not observe this incident, he/she was personally aware
22 of specific facts supporting the veracity of the original source's
23 account. First, the CRI had been familiar with "Bushy-mo" for
24 "several years" and had observed him "with firearms on prior
25 occasions." Id at ¶ 6-7. Furthermore, shortly after speaking with
26 the original source, the CRI observed "Bushy-mo" wearing a grey
27 jacket entering 565 Ellis Street. Id at ¶ 8-9. In addition, the
28 CRI had personal knowledge "that ["Bushy-mo"] visits Apartment #3."

1 Id at ¶ 10.

2 The CRI's (1) personal knowledge of Boone's past
3 possession of firearms, (2) corroboration of Boone's attire, (3)
4 observation of Boone entering 565 Ellis Street and (4) knowledge of
5 Boone's past visits to the apartment provide indicia of reliability
6 sufficient to meet the Angulo-Lopez standard. See Angulo-Lopez,
7 791 F2d at 1397. Because there is "a substantial basis for
8 crediting the hearsay," the second factor of the Gates totality of
9 the circumstances test -- the CRI's basis of knowledge -- is
10 satisfied. See Gates, 462 US at 232-33, 241-42.

11 The government has also satisfied the first factor of the
12 Gates test -- the CRI's veracity or reliability. The CRI had
13 "consistently provided reliable, trustworthy and accurate
14 information," leading to "at least five arrests." Nocetti Decl at
15 ¶ 12-13. According to the Ninth Circuit, "[i]f the informant has
16 provided accurate information on past occasions, he may be presumed
17 trustworthy on subsequent occasions." See Angulo-Lopez, 791 F2d at
18 1397. Boone contends that the financial compensation the CRI
19 received for the information he/she provided to Nocetti and the
20 CRI's felony record undermine the CRI's reliability. Doc #26 (Rep
21 Opp) at 7. See United States v Spach, 518 F2d 866, 870 (7th Cir
22 1975) ("Cases involving unnamed or paid informers are
23 distinguishable from cases involving informers who are victims of
24 crimes or citizens with no apparent motive to falsify
25 information.").

26 Boone cites no decision in this circuit, however, that
27 compensating an informant undermines the informant's reliability or
28 veracity. On the contrary, the Ninth Circuit has found that

1 "[i]nformants often, if not usually, cooperate for money, and the
2 fact that an informant has an ulterior or impure motive in coming
3 forward to provide information to the police does not preclude a
4 finding that the informant is nevertheless credible." United
5 States v Meling, 47 F3d 1546, 1555 (9th Cir 1995). For the
6 foregoing reasons, the court finds that the officers conducted
7 their search with the belief that "a fair probability or
8 substantial chance of criminal activity" existed. See United
9 States v Alaimalo, 313 F3d 1188, 1193 (9th Cir 2002).

10
11 D

12 Although the court finds that the officers had probable
13 cause to obtain a warrant, the lack of exigent circumstances in the
14 present case renders the officers' warrantless search a violation
15 of the Fourth Amendment. "[A]bsent exigent circumstances, a
16 warrantless entry to search for weapons or contraband is
17 unconstitutional even when a felony has been committed and there is
18 probable cause to believe that incriminating evidence will be found
19 within.'" Groh v Ramirez, 540 US 551, 559 (2004) (quoting Payton,
20 445 US at 587-88). Exigent circumstances exist where there is an
21 "urgent need for immediate action." United States v Alvarez, 810
22 F2d 879, 881 (9th Cir 1987) (citations and quotations omitted).
23 Exigencies include: "the need to protect an officer or the public
24 from danger"; "the need to avoid the imminent destruction of
25 evidence"; "when entry in 'hot pursuit' is necessary to prevent a
26 criminal suspect's escape"; and "to respond to fires or other
27 emergencies * * *." United States v Brooks, 367 F3d 1128, 1133 n5
28 (9th Cir 2004) (citations omitted).

1 "[T]he police bear a heavy burden when attempting to
2 demonstrate an urgent need that might justify warrantless searches
3 or arrests." LaLonde, 204 F3d at 956. The police can "meet that
4 burden only by demonstrat[ing] specific and articulable facts to
5 justify the finding of exigent circumstances." Id at 957
6 (citations and quotations omitted). "Furthermore, the presence of
7 exigent circumstances necessarily implies that there is
8 insufficient time to obtain a warrant; therefore, the government
9 must show that a warrant could not have been obtained in time."
10 United States v Reid, 226 F3d 1020, 1028 (9th Cir 2000) (citations
11 and quotations omitted).

12 The court finds that there were no exigent circumstances
13 justifying the officers' warrantless entry into the apartment. The
14 government argues in vain that (1) the officers were in "hot
15 pursuit" of the subject and (2) the officers and the public were in
16 danger. Opp Supp at 9. First, there was clearly no "pursuit" in
17 the present case. The CRI informed Nocetti that he had been told
18 that "Bushy-mo" had brandished a gun at an unidentified person; the
19 CRI observed Boone enter 565 Ellis Street; Nocetti contacted
20 O'Reilly; O'Reilly contacted fellow officers, with whom he entered
21 565 Ellis Street and pushed open the apartment door. Nocetti Decl
22 at ¶ 4-5, 18-19; O'Reilly at ¶ 8-12.

23 Although the government emphasizes that "all these events
24 transpired within a matter of minutes," Opp Supp at 9, the officers
25 alone created the alleged urgency of this situation. The
26 government claims that "the officers were in hot pursuit of a
27 suspect who had, moments earlier, brandished an assault weapon."
28 Opp Supp at 9 (emphasis added). The facts do not support this

1 statement. Neither Nocetti nor O'Reilly indicated how much time
2 elapsed between the alleged crime and the CRI's observation of
3 Boone. See generally Nocetti Decl; O'Reilly Decl. Nor did the
4 officers' testimony reveal the duration between Boone's entrance
5 into 565 Ellis Street and the CRI's call to Nocetti. Id.

6 The period between Nocetti's conversation with the CRI
7 and the commencement of the officers' warrantless search could be
8 more accurately described as investigative communication. The
9 Ninth Circuit has held that "tracing of suspect through
10 investigative processes is not a case of hot pursuit, unless that
11 term is to be stretched beyond all reasonable meaning." See United
12 Stated v George, 883 F2d 1407, 1415 n5 (9th Cir 1989) (citations
13 and quotations omitted). Neither the CRI nor any of the officers
14 had witnessed Boone's alleged crime or pursued him to the
15 apartment. Accordingly, there was "no immediate or continuous
16 pursuit of the [defendant] from the scene of a crime" that would
17 establish "hot pursuit." See Welsh v Wisconsin, 466 US 740, 753
18 (1984).

19 Neither was there sufficient danger to the officers or
20 the public to constitute exigent circumstances. The government
21 attempts to establish "danger" by describing the uncertainty of the
22 situation: "the officers had no knowledge as to who the legal
23 resident of unit #3 was or the identity of the suspect at this
24 time; "the officers were unaware if anyone inside was being
25 threatened with the firearm or where the persons who possessed the
26 firearm was located inside the unit"; "[t]he officers had no
27 indication if the suspect intended harm to any of the unit's
28 occupants or if the suspect was lawfully inside unit #3." Opp Supp

1 at 8-9 (emphasis added). Rather than providing "specific and
2 articulable facts" demonstrating danger, these statements
3 demonstrate that the officers lacked specific knowledge of
4 potential danger to them or the public. See LaLonde, 204 F3d at
5 957.

6 The only compelling facts that the government introduces
7 to demonstrate danger took place after the officers commenced their
8 warrantless search by pushing open the door to the apartment.
9 Prior to the search, O'Reilly was concerned about the "tactical
10 disadvantage" that the "narrow" hallway presented to the officers,
11 and about the safety of the apartment building residents and
12 children in the playground across the street. O'Reilly Decl at ¶
13 13, 15. These concerns, however, were not based on specific
14 evidence of danger. Not until opening the door and seeing former
15 felon Easterling did O'Reilly determine, perhaps justifiably, that
16 the situation was "dangerous to both law enforcement officers and
17 members of the community." Opp Supp at 9.

18 The Ninth Circuit, however, has ruled that exigent
19 circumstances caused by officers' actions do not justify a
20 warrantless search. See Hopkins v City of Sierra Vista, 931 F2d
21 524, 527 (9th Cir 1991) ("The exigencies must be viewed from the
22 totality of the circumstances known to the officers at the time of
23 the warrantless intrusion.") (emphasis added); United States v
24 Driver, 776 F2d 807, 810 (9th Cir 1985) ("The agents in this case
25 would not have had to fear for their safety if they had not first
26 entered the warehouse. Thus, the agents' search of the warehouse
27 can only be excused if their initial entry was justified by exigent
28 circumstances."). Accordingly, the officers cannot claim danger as

1 an exigent circumstance in the present case.

2 The Ninth Circuit's decision in George also counsels
3 against a finding of exigent circumstances in the present case. In
4 George, the suspect robbed two banks on the same day, shooting and
5 injuring a security guard during the second robbery. 883 F2d at
6 1409. After positively identifying the suspect and discovering
7 that the suspect had a history of violent behavior during his bank
8 robberies, two officers proceeded to the suspect's apartment. Id
9 at 1410. The officers pushed open the closed screen door without
10 knocking or announcing their presence. Id. Finding the suspect
11 holding a black object, the officers shot and arrested the subject.
12 Id.

13 The Ninth Circuit held that there were no exigent
14 circumstances justifying the officers' warrantless search in
15 George. Id at 1414-15. The George court held:

16 Suspects who are inside their homes and unaware
17 of their impending arrests generally have no
18 reason immediately to flee, * * * nor would
19 they ordinarily have any reason immediately to
20 destroy the fruits of their crime * * *.
21 Likewise, without more there is little reason
22 for them to endanger the lives of themselves or
23 others. Consequently, law enforcement officers
24 confronting this type of situation can, without
25 great difficulty, maintain surveillance of the
26 premises, * * * and either wait to effectuate a
27 valid public arrest when the suspects emerge,
28 * * * or seek an arrest warrant from a neutral
and detached magistrate.

Id at 1413-14.

 The court finds that the circumstances in the instant
case present a less compelling case for exigent circumstances than
those in George. As in George, the government has provided no
evidence demonstrating that Boone was aware of his impending

1 arrest. Unlike Boone, the suspect in George had already harmed
2 someone. Furthermore, as a group of seven officers in the hallway
3 outside the apartment, O'Reilly and his team had an even greater
4 opportunity than the two officers in George to conduct surveillance
5 while also pursuing an arrest warrant. Accordingly, the
6 government's argument for exigent circumstances in the present case
7 is unpersuasive.

8 Because there was no "hot pursuit" or apparent danger to
9 the officers or public, the court finds that no exigent
10 circumstances justified the officers' warrantless search of the
11 apartment.

12
13 III

14 The court finds that Boone had a "legitimate expectation
15 of privacy" protected by the Fourth Amendment that the government
16 violated when it conducted a warrantless search without exigent
17 circumstances. Accordingly, the court GRANTS Boone's motion to
18 suppress the fruits of the government's unlawful search, including:
19 the firearm discovered by the officers; the photographs taken by
20 the officers; the jacket seized by the officers; and the statements
21 made by the individuals arrested during the search, including
22 Janice McDonald, Shakira Robertson, Sammil Warren, Charles Adams
23 and Christopher Easterling.

24 IT IS SO ORDERED.

25
26 

27 VAUGHN R WALKER
28 United States District Chief Judge